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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/764,338	01/19/2001	William Richard Dyer	0914-1464	7156
6449	7590	10/08/2004	EXAMINER	
ROTHWELL, FIGG, ERNST & MANBECK, P.C. 1425 K STREET, N.W. SUITE 800 WASHINGTON, DC 20005			JARRETT, SCOTT L	
			ART UNIT	PAPER NUMBER
			3623	

DATE MAILED: 10/08/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	09/764,338	DYER, WILLIAM RICHARD
	<b>Examiner</b>	<b>Art Unit</b>
	Scott L. Jarrett	3623

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 19 January 2001.

2a) This action is FINAL.                    2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 1-17 is/are pending in the application.

4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5) Claim(s) \_\_\_\_\_ is/are allowed.

6) Claim(s) 1-17 is/are rejected.

7) Claim(s) \_\_\_\_\_ is/are objected to.

8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) Notice of References Cited (PTO-892)  
 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)  
 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
 Paper No(s)/Mail Date 07/19/2001.

4) Interview Summary (PTO-413)  
 Paper No(s)/Mail Date. \_\_\_\_\_

5) Notice of Informal Patent Application (PTO-152)

6) Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Specification***

1. 35 U.S.C. 112, first paragraph, requires the specification to be written in "full, clear, concise, and exact terms." The specification is replete with terms which are not clear, concise and exact. The specification should be revised carefully in order to comply with 35 U.S.C. 112, first paragraph. Examples of some unclear, inexact or verbose terms used in the specification are: the use of "if" when "is" was intended (page 10, line 22), the use of "HTML codes" when "HTML code" was intended (page 14, line 12), the use of "reputation" when "repetitive" was intended (page 18, line 3) and the term PERL applets when "Java Applets/PERL scripts" was intended. Appropriate correction is required.

### ***Claim Objections***

2. Claim 13 is objected to because of the following informalities: The term PERL applet is not a recognized programming language or construct. The examiner read the claim as: CGI Script, Java Applet or PERL script for the purpose of evaluating the claims. Appropriate correction is required.

### ***Claim Rejections - 35 USC § 112***

3. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

4. Claims 1-17 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention.

Regarding Claim 1 the disclosure fails to state or teach one of ordinary skill in the art the best mode (by hand, computer or like device) for performing the comparison of the user's first response to subsequent responses (step 5). Without this disclosure one skilled in the art would be unable to practice the invention without undue experimentation.

5. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

6. Claim 9 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The disclosure does not clearly define the term "gives". The term could be interpreted in many ways including for example the producer providing the physical embodiment of the product to the online vendor free of charge, or enabling the online

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vendor to sell or market the product online, or providing information regarding the product's marketable attributes.

***Claim Rejections - 35 USC § 101***

7. Claims 1-17 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

The basis of this rejection is set forth in a two-prong test of:

- (1) whether the invention is within the technological arts; and
- (2) whether the invention produces a useful, concrete, and tangible result.

For a claimed invention to be statutory, the claimed invention must be within the technological arts. Mere ideas in the abstract (i.e., abstract idea, law of nature, natural phenomena) that do not apply, involve, use, or advance the technological arts fail to promote the "progress of science and the useful arts" (i.e., the physical sciences as opposed to social sciences, for example) and therefore are found to be non-statutory subject matter. For a process claim to pass muster, the recited process must somehow apply, involve, use, or advance the technological arts. In the present case, claims 1-17 only recite an abstract idea. The recited steps of merely obtaining, storing, sharing and analyzing information from online users regarding items does not apply, involve, use, or advance the technological arts since all of the recited steps can be performed in the mind of the user or by use of a pencil and paper. These steps only constitute an idea of how to collect item information from a plurality of users.

As to technological arts recited in the preamble, mere recitation in the preamble (i.e., intended or field of use) or mere implication of employing a machine or article of manufacture to perform some or all of the recited steps does not confer statutory subject matter to an otherwise abstract idea unless there is positive recitation in the claim as a whole to breathe life and meaning into the preamble. In the present case, none of the recited steps are directed to anything in the technological arts as explained above with the exception of the recitation that the method is for "online" sustainability testing or the questionnaires are presented or transmitted over a "distributed network". Looking at the claims as a whole, nothing in the body of the claims recites any structure or functionality to suggest that a computer performs the recited steps. Therefore, the terms discussed are taken to merely recite a field of use and/or nominal recitation of technology.

Additionally, for a claimed invention to be statutory, the claimed invention must produce a useful, concrete, and tangible result. In the present case, the claimed invention collects, stores, shares and analyzes information from online users' with respect to items surveyed (i.e., useful and tangible). Although the recited process produces a useful, concrete, and tangible result, since the claimed invention, as a whole, is not within the technological art as explained above claims 1-17 are deemed to be directed to non-statutory subject matter.

***Claim Rejections - 35 USC § 103***

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claims 1, 3-5, 11, and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over "Using the Web as a Survey Tool: Results from the Second WWW User Survey (James Pitkow and Maragaret Recker, October-November 1994) in view of Dyer, U.S. Patent 5,090,734.

Regarding Claim 1 Pitkow and Recker teaches a method for surveying online users (web users) comprising the steps of:

1. presenting a first item (invitation to participate in web survey) to the user over a distributed network;
2. presenting a questionnaire (survey or questions) to the user over the distributed network if the user selects the first item;
3. accepting and storing (using electronic medium for data transfer and collation) the user's first response to the questionnaire;
4. repeating, at least one time, steps and subsequent responses; accepting and storing the user's to the questionnaire (adaptive questions);
5. comparing the user's first response to the user's subsequent responses (adaptive questions).

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Pitkow and Recker does not teach sustainability testing as claimed.

Dyer ('734) teaches sustainability testing (method for effecting evaluation of consumer goods by test panel) but does not teach conducting sustainability testing utilizing a survey of online users.

It would have been obvious to one skilled in the art of at the time of the invention to combine the online survey capability of Pitkow and Recker with the sustainability testing of Dyer ('734) resulting in a online sustainability testing in order to take full advantage of the extended reach, ease of administration and development and reduced costs offered by online surveys.

Regarding Claims 3 and 4 Pitkow and Recker teaches the use of adaptive questions (Question Engine, see Overview section; page 3) wherein answers provided to certain questions are used to determine the next set of questions and leads to a cycle of "question – answer – adapt/re-ask" (see Abstract and Introduction sections; page 1).

Regarding Claim 5 and 14 Pitkow and Recker teaches use of a distributed network (Web, Internet) for conducting a user survey (see Title and Abstract section; page 1).

Regarding Claim 11 Pitkow and Recker does not teach the use of online surveys for snack food items.

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Dyer ('734) teaches the use of sustainability testing as discussed above for testing for snack food products (Column 3, Description of the Embodiment section).

It would have been obvious to one in the art to apply the online sustainability testing as discussed above to snack food items in view of the teachings of Dyer ('734) in order to take full advantage of the extended reach, ease of administration and development and reduced costs offered by online surveys.

Regarding Claim 13 Pitkow and Recker teaches making the survey accessible through a CGI front-end (see Architecture section; page 5).

Regarding Claim 16 Pitkow and Recker teaches assigning an identifying code to the user (an ID/Session Tracker) within the Internet survey wherein the user responses are associated with the identification code thereby allowing for analysis between each questionnaire (see Architecture section; page 5).

10. Claim 2, 9, 10, 15, and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pitkow and Recker (online survey) in view of Dyer ('734), sustainability testing, and further in view of official notice.

Regarding Claim 2 official notice is taken that correcting or correction of skewed results (outliers) is well known in the art of statistical analysis. It is obvious the method for surveying as claimed would benefit from the proper treatment of data errors or

anomalies which inevitably arise when performing statistical sampling. Accordingly, it would have been obvious to one in the art at the time of the invention to incorporate statistical techniques to prevent the distortion of the survey findings due to skewed data.

Regarding Claim 9 the term "gives" has been deemed vague and indefinite under the second paragraph of 35 U.S.C. 112 as discussed above. However for purposes of evaluating the claim the term gives has been read to mean enabling the online vendor to sell or market the product online. Official notice is taken wherein the product gives (as defined above) the item to the vendor is well known in the art at the time of the invention. Accordingly, it would have been obvious to one skilled in the art at the time of the invention to give the item to the producer as necessary precondition of conducting any online sustainability testing; without an item the survey could not be conducted as claimed.

Regarding Claim 10 official notice is taken that the producers offering of an exclusive item to a vendor (online or offline) is well known in the art at the time of the invention. It is common industry practice for item producers and vendors to work cooperatively in offering exclusive items as a means of enticing purchasers for those items and vendor patrons/customers. For example some branded items are only available (exclusively available) at particular vendors; one such relationship exists between PepsiCo and Pizza Hut wherein Pizza Hut exclusively offers and promotes PepsiCo products. Accordingly, it would have been obvious to one in the art at the time

of the invention to incorporate exclusive items during sustainability testing as a means of enticing online users to participate.

Regarding Claim 15 official notice is taken that the use of XML as a means of transmitting (exchanging) a wide variety of data on the Web and elsewhere is well known in the art at the time of the invention. It is obvious the method for surveying as claimed would benefit from the simple and very flexible text format XML offers. Accordingly, it would have been obvious to one in the art at the time of the invention to incorporate XML as a means of transmitting (exchanging) data over a distributed network.

Regarding Claim 17 Official notice is taken that the use of cookie as an identifying code. The use of cookies as a means of uniquely identifying online users is well known in the art. It is obvious the method for surveying as claimed would benefit from implementation of cookies to overcome the anonymous and stateless nature of the Internet. Accordingly, it would have been obvious to one in the art at the time of the invention to incorporate cookies as a means of identifying online users.

11. Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Pitkow and Recker (online survey) in view of Dyer ('734), sustainability testing, and further in view of Pinsley, U.S. Patent 6,070,145.

Pitkow and Recker in view of Dyer ('734) teaches online sustainability testing as discussed above but Pitkow and Recker nor Dyer ('734) teach the participation of the first entity and second entity (distinct entities) as claimed.

Pinsley ('145) teaches the method for conducting a survey of users on a computer network utilizing two distinct entities for the survey (surveyor's web site) and item portions (advertiser's web site) of the method (Figure 3, element 4) but does not disclose computer assisted sustainability testing as claimed.

It would have been obvious to one in the art at the time of the invention to provide the online sustainability testing as discussed above (Piktow and Recker; Dyer ('734)) with the ability to conduct a survey of users on a computer network utilizing any number of distinct entities in order to enable each entity the ability specialize in their respective areas of expertise thereby capturing the in-depth expertise and economies of scale associated with such specialization of work.

12. Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Pitkow and Recker (online survey) in view of Dyer ('734), sustainability testing, and further in view of Pinsley, U.S. Patent 6,070,145.

Pitkow and Recker in view of Dyer ('734) teaches online sustainability testing as discussed above but Pitkow and Recker nor Dyer ('734) teach the participation of distinct entities wherein the first entity is an online vendor and the second entity is a producer of the item.

Pinsley ('145) teaches the method for conducting a survey of users on a computer network utilizing distinct entities for the survey (surveyor's web site) and item portions (advertiser's web site) of the method (Figure 3, element 4) but does not disclose computer assisted sustainability testing as claimed.

It would have been obvious to one in the art at the time of the invention to provide the online sustainability testing as discussed above (Piktow and Recker; Dyer ('734)) with the ability to conduct a survey of users on a computer network utilizing any number or combination of distinct entities enabling each entity the ability specialize in their respective areas of expertise thereby capturing the in-depth expertise and economies of scale associated with such specialization of work. For example one could conduct online sustainability testing with three or more entities participating in the efforts including: a market research firm (surveyor) creating and analyzing the questionnaire, an online vendor/store who markets and sells the product(s) to be tested and the item producer (manufacturer) of the item (products) being tested.

13. Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Pitkow and Recker (online survey) in view of Dyer ('734), sustainability testing, and further in view of Pinsley, U.S. Patent 6,070,145.

Pinsley ('145) teaches survey results (information is collected, processed and analyzed by the surveyor; Column 3, Lines 5-8) are shared by the producer with the online vendor (the information may be delivered to the advertiser; Column 3, Lines 5-8).

It would have been obvious to one in the art at the time of the invention to share survey and other information between the distinct entities participating in the online sustainability testing as discussed above (Piktow and Recker; Dyer ('734); Pinsley ('145)) in order to facilitate the successful execution of the online sustainability testing and reinforce cooperative nature that exists between the participating entities.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Scott L. Jarrett whose telephone number is (703) 305-0587. The examiner can normally be reached on 8:00AM - 5:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Hafiz Tariq can be reached on (703) 305-9643. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

SJ  
September 29, 2004



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